

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  HAWKEYE POWER PARTNERS, LLC	DOCKET NO. WRU-03-59-1513
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**ORDER GRANTING WAIVER AND REQUIRING ADDITIONAL INFORMATION**

(Issued October 21, 2003)

On September 11, 2003, Hawkeye Power Partners, LLC (Hawkeye) filed with the Utilities Board (Board) a request for waiver, pursuant to Iowa Code § 476A.15 (2003), of all the electric generating certificate requirements contained in Iowa Code chapter 476A with respect to a proposed expansion of one of its wind facilities operating in Cerro Gordo County, Iowa. Hawkeye currently operates two wind facilities consisting of 55 turbines with a total nameplate capacity of 41.25 MW. The output of the turbines is collected to two feeder or gathering lines. Gathering line number 1 has a total capacity of 19.5 MW and gathering line number 2 has a capacity of 21.75 MW. Hawkeye proposes to add one 660 kW turbine to feeder number 1, increasing its total capacity to 20.16 MW. Hawkeye plans to add 12 such turbines to feeder number 2, increasing its total capacity to 29.67 MW.

In its request for waiver, Hawkeye said it was authorized by the Consumer Advocate Division of the Department of Justice (Consumer Advocate) to state

Consumer Advocate has no objection to the waiver request. No objections to the request were filed.

Iowa Code § 476A.2 provides "a person shall not commence to construct a facility except as provided in 476A.9 unless a certificate for the facility has been issued by the board." Iowa Code § 476A.1(5) defines "facility" as follows:

"Facility" means any electric power generating plant or a combination of plants at a single site, owned by any person, with a total capacity of twenty-five megawatts of electricity or more ...

However, Iowa Code § 476A.15 gives the Board the authority to waive any of the certification requirements if the Board determines that the public interest would not be adversely affected.

Hawkeye's waiver request only relates to gathering line number 2. Hawkeye correctly noted in its request that even with the expansion, the capacity of the turbines connected to gathering line number 1 would be less than 25 MW. The Board has consistently held in several declaratory rulings that if the capacity of the wind turbines connected to a single gathering or feeder line is less than 25 MW, there is no "facility" as defined in section 476A.2 and, therefore, no certificate or waiver is necessary prior to construction of the facility. See, MidAmerican Energy Company, "Declaratory Order," Docket No. DRU-03-3 (6/6/03); Flying Cloud Power Partners, LLC, "Declaratory Order," Docket No. DRU-03-2 (2/10/03).

With the expansion, the turbines connected to gathering line number 2 will exceed 25 MW in capacity. The question, therefore, becomes whether the public interest would be adversely affected by granting the waiver.

Before addressing the specific facts related to Hawkeye's waiver request, the purposes behind and interplay between Chapter 476A and the Iowa alternate energy production (AEP) statutes must be examined. Chapter 476A generally requires any person to acquire a generating certificate for a facility of 25 MW or more, but grants the Board the authority to waive the certification requirements for any facility, regardless of size, if the public interest would not be adversely affected. A certificate proceeding is a contested case proceeding. Generally, these proceedings take a minimum of six months.

The three decision criteria in a certification proceeding are: 1) is the construction of the facility consistent with the legislative intent expressed in Iowa Code § 476.53 and the economic development policy of the state, and will the services and operations resulting from construction be detrimental to the provision of adequate and reliable electric service; 2) is the applicant willing to construct, maintain, and operate the facility pursuant to the terms of the certificate; and 3) is construction and operation by the applicant consistent with reasonable land use and environmental policies. The legislature has stated that the public policy of this state is "to encourage the development of alternate energy production facilities and small hydro facilities in order to conserve our finite and expensive energy resources and to provide for their most efficient use." Iowa Code § 476.41. In addition, Iowa Code

§ 476.53 states that it is the intent of the general assembly to attract electric power generating facilities to the state.

In examining the first factor, the jobs and tax revenues created by the facility are consistent with the state's economic development policies. The other aspect of the first factor is that the project not be detrimental to the provision of adequate and reliable electric service. Under this factor, the Board typically focuses on the impact the generation project has on the transmission system. Here, the expansion of the capacity of gathering line number 2 is less than 8 MW, and while Hawkeye has not provided any studies that analyze system impacts, the Midwest Independent Transmission System Operator (MISO) generally requires such studies or other information before allowing interconnection. The Board will require Hawkeye to file any generation interconnection studies or other information required for approval by MISO. No further Board determination is required. The Board notes that if the expanded capacity were funneled through a third gathering line, no Board action would have been required. Such an expansion would most likely have similar impacts on the transmission system.

With respect to the second factor, Hawkeye's willingness to perform the services is evidenced by its contract negotiations with Interstate Power and Light Company to sell the expanded output. If Hawkeye fails to perform subject to its contract to sell wholesale power, the buyer has breach of contract remedies.

The Board has generally deferred to findings by the Iowa Department of Natural Resources (IDNR) and local authorities in determining whether the third

factor has been met. If environmental permits are necessary, Hawkeye will have to apply to IDNR or the appropriate regulatory agency. Hawkeye will also have to comply with any county or other local zoning ordinances. Finally, in adopting the AEP statutes, the legislature has already determined the development of AEP power is in the best interests of Iowa. Iowa Code § 476.41 states:

It is the policy of this state to encourage the development of alternate energy production facilities and small hydro facilities in order to conserve our finite and expensive energy resources and to provide for their most efficient use.

Turning to the specifics of the waiver request, Hawkeye's gathering line number 2 expansion will increase total capacity by approximately 8 MW. Gathering line number 1 and gathering line number 2, when the expansions are completed, will total less than 50 MW, after an increase of about 9 MW. The impacts of such a small expansion on the transmission system will be minimal. In addition, because of the legislative policy encompassed in the AEP statutes, any Board determinations required under Chapter 476A have already been made. A certificate proceeding would only add time and expense to Hawkeye's project and would not further the public interest. The Board will grant the waiver.

The Board notes that Hawkeye was granted a waiver for the initial 41.25 MW project in 1998. At the time, the Board's waiver authority was limited to projects that were less than 100 MW. While the decision criteria for a certification proceeding has changed since 1998, the reasons for granting the current waiver for the expansion

are similar to the reasons for granting the initial waiver. Hawkeye Power Partners, LLC, "Order Granting Waiver," Docket No. WRU-98-17 (1998).

**IT IS THEREFORE ORDERED:**

1. The request for waiver filed by Hawkeye Power Partners, LLC, on September 11, 2003, is granted.
2. Hawkeye will be required to file with the Board any generation interconnection studies or other information pertaining to this project that is required for approval by the Midwest Independent Transmission System Operator.

**UTILITIES BOARD**

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Sharon Mayer  
Executive Secretary, Assistant to

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 21<sup>st</sup> day of October, 2003.